**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL REVISION APPLICATION No. 74 of 2007**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**PRAVINBHAI MAGANBHAI MAKWANA - Applicant(s)**
**Versus**
**STATE OF GUJARAT - Respondent(s)**

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**Appearance :**
MRPRANAVMRAVAL for Applicant(s) : 1,
MR.H.L. JANI, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**

**Date : 14/02/2007**

**ORAL JUDGMENT**

**Rule**. Mr.H.L. Jani, learned APP waives service of rule. The present Revision Application is filed by

the petitioner-original accused aggrieved by order dated 02.02.2007 passed below application, Exh.43 in Sessions Case No.100 of 2006 by which the learned Additional Sessions Judge & Presiding Officer, Fast Track Court No.12, Rajkot rejected the same.

The application-Exh.43 was filed praying that PW-13, Jagdishkumar Khodabhai Solanki, who was examined at Exh.37 be recalled for further cross-examination. The case of the petitioner-original accused is that the doctor had produced the In-door and Out-door case papers of the deceased, which are exhibited at Exh.39, but inadvertently some questions related to those case papers could not be asked. It is further submitted that the cross examination of the doctor is very much required in the interest of justice to get the important and material facts on the record of the case. It is also stated in the application that the said case papers contained details of the medical treatment in medical language and required facts can be brought on record by cross-examining the said witness and that will serve the ends of justice.

2. The learned Additional Sessions Judge rejected

the application by saying that PW-13, Medical Officer, Dr.Jagdishkumar Solanki was examined on 09.01.2007 at Exh.37. During his deposition he produced exh.38-medical certificate wherein the injury sustained by the deceased are set out. After chief examination was over, the said witness was cross-examined for some time. He produced in-door case papers at exh.39. Thereafter, an adjournment was sought to continue the further cross-examination. The same was granted and the matter was adjourned to 12.01.2007. On that day, the learned advocate for accused cross-examined the witness at length.

The learned Additional Sessions Judge has recorded that it is not the case of the accused that there is some contradiction in the contents of Exh.38-injury certificate and the contents of the indoor case papers, exh.39. The learned Additional Sessions Judge relying upon a decision of the Hon'ble Apex Court in the matter of **Mohanlal Shamji Soni Vs. Union of India & another**, reported in 1991 (2) GLR 974 held that, 'the power of the court to recall witnesses is to be exercised judiciously and not capriciously.'

3. In the present case, the witness was examined on 09.01.2007. He produced Exh.38, the injury certificate. After his chief was over, he was cross examined by the learned advocate for accused and he produced exh.39, in-door case papers of the deceased. The matter was adjourned to 12.01.2007 at the request of the learned advocate for accused for further cross-examination. The request was granted. The doctor was cross-examined at length.

The present application, Exh.43 was filed on 18.01.2007 with a request for recalling the doctor on the ground that inadvertently some details could not be brought on record, while cross-examining the doctor.

The request cannot be said to be unreasonable only because the witness was cross-examined at length on 12.01.2007. It is possible that inadvertently something was left out. Only because Exhibits 38 & 39 are on record, cross examination cannot be said to be dispensable to bring home some additional material, may be in the form of contradiction between the contents of the two documents. It is true that power

conferred under sec.311 of the Code of Criminal Procedure, 1898, sec.540 of the New Code be exercised judiciously and not capriciously. But in the present case there is no material which can lead to draw an inference that if 'recall' is permitted, it will amount to 'capricious' exercise of power.

The order passed below exh.43 is hereby quashed and set aside. The application, exh.43 is allowed. The doctor, PW-13 be recalled and be allowed to be cross-examined by the learned advocate for the accused.

At the request of the learned APP, Mr.Jani it is clarified that the cross-examination should be allowed only qua the contents of Exhibits 38 and 39 and nothing beyond that.

4. The Criminal Revision Application is allowed. Rule is made absolute.

**(RAVI R. TRIPATHI, J.)**

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